



BYLAWS OF THE AUSTIN-SAN ANTONIO INTERMUNICIPAL COMMUTER RAIL DISTRICT

§ 1. The District

These bylaws are made and adopted for the regulation of the affairs and the performance of the functions of the Austin-San Antonio Intermunicipal Commuter Rail District (the "District"), an intermunicipal rail district and a political subdivision of the State of Texas authorized and existing pursuant to the laws of the State of Texas, including Vernon's Ann. Civ. Stat. Art. 6550c-1 (the "Act").

§ 2. Principal Office

The domicile and principal office of the District shall be in one of the counties encompassed within the District.

§ 3. General Powers

The activities, property, and affairs of the District will be managed by its Board of Directors (the "Board"), which may exercise all powers and do all lawful acts permitted by the Constitution and statutes of the State of Texas, and these bylaws. Through the Board, the District will perform all duties and functions as required by the Constitution and statutes of the State of Texas and these bylaws.

§ 4. Initial Board

The initial Board of the District shall be composed of Directors appointed pursuant to section 3 of the Act.

(a) The terms of the initial Directors of the District begin on the date of their appointment or election.

(b) The initial Directors each shall serve two-year terms.

(c) Each initial Director shall serve until his or her successor has been duly appointed and qualified or until his or her death, resignation, or removal from office in accordance with these bylaws.

(d) Initial Directors qualified to serve as Directors under applicable law and these bylaws may be reappointed following the expiration of their initial terms on the Board.

§ 5. Subsequent Directors.

(a) Subject to § 7 of these bylaws and except as may be otherwise provided by law (including any amendment to the Act), each successor to an initial Director, and each Director thereafter appointed, shall be appointed for a two-year term. Terms shall end on February 1 in

the second year after initial appointment. Each Director shall serve until his or her successor has been duly appointed and qualified or until his or her death, resignation, or removal from office in accordance with these bylaws.

(b) As new members are appointed to the Board, by reason of new entities becoming a part of the District, Board members, other than the new members, shall determine the length of the new members' terms, so that one-half, or as near as one-half as possible of the members, shall serve terms expiring each year thereby producing staggered terms of Board members.

(c) Directors qualified to serve under applicable law and these bylaws may be reappointed following the expiration of their terms. Except as otherwise provided by applicable law, there is no limitation on the number of terms a Director may serve.

§ 6. Qualifications of Directors

(a) All Directors will have and maintain the qualifications set forth in this § 6 and under the Act.

(b) All appointments to the Board shall be made without regard to disability, sex, religion, age, or national origin.

(c) A person is not eligible to serve as a Director if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of railroad construction, maintenance, or operation;

(2) is employed by or participates in the management of a business entity or other organization either regulated by, or receiving money from, the District;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the District, other than compensation for acquisition of right-of-way;

(4) uses or receives a substantial amount of tangible goods, services, or money from the District, other than compensation or reimbursement authorized by law for Board membership, attendance, or expenses, or for compensation for acquisition of right-of-way;

(5) is an officer, employee, or paid consultant of a Texas trade association in the field of railroad construction, maintenance, or operation; or

(6) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the District.

§ 7. Vacancies

A vacancy on the Board shall be filled promptly by the entity that made the appointment that falls vacant. Each Director appointed to a vacant position shall be appointed for the unexpired term of the Director's predecessor in that position.

§ 8. Resignation and Removal

A Director may resign at any time effective upon giving written notice to the District and the entity that appointed that Director. A Director may be removed from the Board if the Director does not possess at the time the Director is appointed, or does not maintain, the qualifications required by the Act, or if the Director violates the Act. In addition, a Director who cannot discharge the Director's duties for a substantial portion of the term for which he or she is appointed because of illness or disability, or a Director who is absent from more than half of the regularly scheduled Board meetings during a given calendar year, may be removed. If the Executive Director of the District knows that a potential ground for removal of a Director exists, the Executive Director shall notify the Chairman of the potential ground for removal. The Chairman then shall notify the entity that appointed such Director of potential ground for removal. A Director shall be considered removed from the Board only after the District receives notice of removal from the entity that appointed such Director.

§ 9. Compensation of Directors

Directors shall serve without compensation, but will be reimbursed for their actual expenses of attending each meeting of the Board and for such other expenses as may be incurred in their carrying out the duties and functions as set forth herein.

§ 10. Conflict of Interest

A Director shall not: (a) accept or solicit any gift, favor, or service that might reasonably tend to influence that Director in the making of decisions on behalf of the District or that the Director knows or should have known is being offered with the intent to influence the Director's making of said decisions; or (b) accept other compensation that could reasonably be expected to impair the Director's independence of judgment in the making of decisions on behalf of the District. Directors shall familiarize themselves and comply with all applicable laws regarding conflicts of interest, including any conflict of interest policy adopted by the Board.

§ 11. Meetings

All regular meetings of the Board shall be held at a location reasonably convenient to the Board members and the public, at a specific site, date, and time to be determined by the Chairman. The Chairman may postpone any regular meeting if it is determined that such meeting is unnecessary or that a quorum will not be achieved, but no fewer than four regular meetings shall be held during each calendar year. Special meetings and emergency meetings of the Board may be called, upon proper notice, at any time by the Chairman or at the request of any three Directors. Special meetings and emergency meetings shall be held at such time and place as is specified by the Chairman, if the Chairman calls the meeting, or by the three Directors, if they call the meeting. The Chairman shall set the agendas for meetings of the Board, except that the agendas of meetings called by three Directors shall be set by those Directors.

§ 12. Voting; Quorum

A majority of the Directors constitutes a quorum, and the vote of a majority of the Directors present at a meeting at which a quorum is present will be necessary for any action taken by the Board. No vacancy in the membership of the Board will impair the right of a quorum to exercise all of the rights and to perform all of the duties of the Board. Therefore, if a vacancy occurs, a majority of the Directors then serving in office will constitute a quorum.

§ 13. Meetings by Telephone or Video Conference

(a) Subject to the notice requirements of the Texas Open Meetings Act, the Board and committees of the Board may participate in and hold meetings by means of video or telephone conference or similar communications equipment by which all persons participating in the meeting can hear each other and public presentations. Public participation is permitted by a speaker telephone at a conference room of the District or other facility in a county of the District that is accessible to the public. Participation in a meeting pursuant to this § 13 constitutes being present in person at such meeting, except that a Director will not be considered in attendance when the Director appears at such a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened as generally provided under § 18 of these bylaws. Each part of the telephone conference call meeting that by law must be open to the public shall be audible to the public at the location specified in the notice and shall be tape-recorded or documented by written minutes. On conclusion of the meeting, the tape recording or the written minutes of the meeting shall be made available to the public.

(b) Board and Committee Meetings:

(1) A meeting held by telephone conference call or videoconference need not have a quorum present at any one location.

(2) A telephone conference call or videoconference meeting is subject to the notice requirements applicable to other meetings.

(3) The notice of a telephone conference call or videoconference meeting must specify all locations of the meeting where a member of the board will participate. The notice must also specify the physical location from which the presiding officer of the board or committee will preside. All locations must be open to the public during the open portion of the meeting.

(4) Each part of a telephone conference call meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting as the location of the meeting and shall be tape recorded. The tape recording shall be made available to the public.

(5) Each part of a videoconference meeting that is required to be open to the public shall:

(i) be visible and audible to the public at all locations specified in the notice of the meeting as the locations of the meeting;

(ii) have two-way audio and video communications with each participant in the meeting during the entire meeting; and

(6) Without regard to whether a member of the board or committee is participating in a meeting from a remote location by videoconference call, the board or committee may allow a member of the public to testify at a meeting from a remote location by videoconference call. The board or committee shall designate the location for public participation in the notice of the meeting.

§ 14. Procedure

All meetings of the Board and its committees shall be conducted in accordance with Robert's Rules of Order pursuant to statutorily proper notice of meeting posted as provided by law. The Chairman at any time may change the order of items to be considered from that set forth in the

notice of meeting, provided that all agenda items that require a vote by the Board shall be considered at the meeting for which they have been posted. To the extent procedures prescribed by applicable statutes or these bylaws conflict with Robert's Rules of Order, the statutes or these bylaws shall govern.

§ 15. Committees

(a) Pursuant to the Act, the Board shall appoint an Executive Committee. In addition, the Chairman at any time may designate from among the Directors one or more ad hoc or standing committees, each of which shall be comprised of two or more Directors, and may designate one or more Directors as alternate members of such committees, who may, subject to any limitations imposed by the Chairman, replace absent or disqualified members at any meeting of that committee. The Chairman serves as an ex-officio member, without vote, of each committee. If approved by a resolution passed by a two-thirds vote of the Board, a committee shall have and may exercise some or all of the powers of the Board, to the extent provided in such resolution and subject to the limitations imposed by applicable law. The Chairman shall appoint the chairman of each committee, as well as Directors to fill any vacancies in the membership of the committees. To the greatest extent practicable, the Chairman shall utilize all Directors willing to serve on the aforementioned committees in designating members, alternates and chairmen therefor. At the next regular meeting of the Board following the Chairman's formation of a committee, the Chairman shall deliver to the Directors and the Secretary a written description of the committee, including (a) the name of the committee, (b) whether it is an ad hoc or standing committee, (c) its assigned function(s) and/or task(s), (d) whether it is intended to have a continuing existence or to dissolve upon the completion of a specified task and/or the occurrence of certain events, (e) the Directors designated as members and alternate members to the committee, and its chairman, and (f) such other information as requested by any Director. The Secretary shall enter such written description into the official records of the District. The Chairman shall provide a written description of any subsequent changes to the name, function, tasks, term, or composition of any committee in accordance with the procedure described in the preceding two sentences. A committee also may be formed by a two-thirds vote of the Board, which vote (and not the Chairman) also shall specify the committee's chairman and provide the descriptive information otherwise furnished by the Chairman in accordance with the preceding three sentences. A meeting of any committee formed pursuant to this § 15 may be called by the Chairman, the chairman of the applicable committee, or by any two members of the committee. All committees shall keep regular minutes of their proceedings and report the same to the Board as required. The designation of a committee of the Board and the delegation thereto of District shall not operate to relieve the Board, or any Director, of any responsibility imposed upon the Board or the individual Director by law. To the extent applicable, the provisions of these bylaws relating to meetings, quorums, meetings by telephone, and procedure shall govern the meetings of the Board's committees. All meetings of committees shall be subject to the Texas Open Meetings law.

(b) The Executive Committee shall consist of the Chairman of the Board, Vice Chairman of the Board, and other Board members appointed by the Board. The Board shall appoint the members from diverse geographic areas as far as possible and the committee shall have at least two of the members residing in the northern portion of the District and two residing in the southern portion of the District.

Agendas for Executive Committee meetings shall be sent to all Board members. If any

two members of the Board of Directors, whether or not serving on the Executive Committee, request that an item on the Executive Committee agenda not be finally determined by the Executive Committee, and notify the Chairman prior to the start of the Executive Committee meeting during which the item is to be considered, the item shall not be subject to final action by the Executive Committee but shall be placed on the Board agenda for final action. The Executive Committee may make a recommendation on any item and may refer any item to the Board for final action. Any Board member may attend any Executive Committee meeting and participate in Executive Committee discussions but shall not vote unless the member is a member of the Executive Committee.

The Chairman of the Board shall preside over the Executive Committee.

The Executive Committee shall have the full power to act on all matters on which the Board could act except for the following:

- (a) Approval of or amendment to the District budget
- (b) Election of District officers
- (c) Approval of expenditures over \$100,000
- (d) Amendment of bylaws
- (e) Authorization of interlocal agreements with other governmental entities
- (f) Appoint, suspend or terminate the executive director
- (g) Institute and prosecute eminent domain proceedings.

The Board may review and reverse any action of the Executive Committee unless the action authorizes a contract and the contract has been executed by all parties or the expenditure of funds authorized by the Executive Committee has occurred. [(b) as amended 11/5/04]

§ 16. Notice to Directors

Notice of each meeting of the Board shall be sent by the Secretary by mail, electronic mail, or facsimile to all Directors entitled to vote at such meeting. If sent by mail, such notice will be deemed delivered when it is deposited in the United States mail with sufficient postage prepaid. If sent by electronic mail or facsimile, the notice will be deemed delivered when transmitted properly to the correct e-mail address or number. Such notice of meetings also may be given by telephone, provided the Executive Director, Chairman, or Secretary speaks personally to the applicable Director to give such notice.

§ 17. Waiver of Notice

Whenever any notice is required to be given to any Director by statute or by these bylaws, a written waiver of such notice signed by the person or persons entitled to such notice, whether before or after the time required for such notice, shall be deemed equivalent to the giving of such notice.

§ 18. Attendance as Waiver

Attendance of a Director at a meeting of the Board or a committee thereof will constitute a waiver of notice of such meeting, except that a Director will not be considered in attendance when the Director appears at such a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

§ 19. Officers

The officers of the District shall consist of a Chairman, a Vice Chairman, a Secretary, and a Treasurer. The offices of Secretary and Treasurer may be held simultaneously by the same person. The individuals elected as officers who are members of the Board shall not be compensated for their service as officers. However, officers shall be reimbursed for all expenses incurred in conducting proper District business and for travel expenses incurred in the performance of their duties, subject to the expense reimbursement policies adopted by the Board.

§ 20. Election and Term of Office

Officers will be elected by the Board for a term of two years, subject to § 21 of these bylaws. The election of officers to succeed officers whose terms have expired shall be by a vote of the Directors of the District at the first meeting of the District held after February 1 of each year or at such other meeting as the Board determines within six months after said date. Except as provided in the following sentence, a Director may not be elected to more than two successive two-year terms as Chairman pursuant to this § 20, provided said two successive terms may be in addition to and preceded by said Director's previous election as Chairman to serve the remainder of an unexpired term pursuant to § 21 of these bylaws. The foregoing two-term limit may be waived by a resolution passed by a two-thirds vote of the Board stating that due to a significant challenge or crisis then confronting the District (e.g., an unusual incidence of turnover among the Directors, the proposal or implementation of adverse legislative or regulatory changes, significant operational or financial difficulties, or other matters), the continued service of the current Chairman beyond the foregoing limit furthers the best interests of the District.

§ 21. Removal and Vacancies

Each officer shall hold office until a successor is chosen and qualified, or until the officer's death, resignation, or removal, or, in the case of a Director serving as an officer, until such officer ceases to serve as a Director. Any officer may resign at any time upon giving written notice to the Board. Any officer may be removed from service as an officer at any time, with or without cause, by the affirmative vote of a majority of the Directors of the District. The Directors of the District may at any meeting vote to fill an officer position vacated due to an event described in this § 21 for the remainder of the unexpired term.

§ 22. Chairman

The Chairman must be a Director of the District. The Chairman shall appoint all committees of the Board as specified in these bylaws (except as otherwise provided in § 15 of these bylaws), call all regular meetings of the Board, preside at and set the agendas for all meetings of the Board (except as provided in the concluding sentence of § 11 of these bylaws), and approve the reimbursement of expenses to the Executive Director in accordance with expense reimbursement policies adopted by the Board.

§ 23. Vice Chairman

The Vice Chairman must be a Director of the District. During the absence or disability of the Chairman, upon the Chairman's death, or upon the Chairman's request, the Vice Chairman shall perform the duties and exercise the District and powers of the Chairman.

§ 24. Secretary

The Secretary need not be a Director of the District. The Secretary shall keep or cause to be kept true and complete records of all proceedings of the Directors in books provided for that purpose and shall assemble, index, maintain, and keep up-to-date a book of all of the policies adopted by the District; attend to the giving and serving of all notices of meetings of the Board and its committees and such other notices as are required by the office of Secretary and as may be directed by the Act, any trust indenture binding on the District, Directors of the District, or the Executive Director; seal with the official seal of the District and attest all documents, including trust agreements, bonds, and other obligations of the District that require the official seal of the District to be impressed thereon; execute, attest, and verify signatures on all contracts in which the total consideration equals or exceeds an amount established by Board resolutions, contracts conveying property of the District, and other agreements binding on the District which by law or Board resolution require attestation; certify resolutions of the Board and any committee thereof; maintain custody of the corporate seal, minute books, accounts, and all other official documents and records, files, and contracts that are not specifically entrusted to some other officer or depository; and hold such administrative offices and perform such other duties as the Directors of the District or the Executive Director shall require.

§ 25. Treasurer

The Treasurer need not be a Director of the District. The Treasurer shall execute all requisitions for withdrawals from the funds of the District, unless the Board designates a different officer, Director, or employee of the District to execute any or all of such requisitions. In addition, the Treasurer shall execute, and if necessary attest, any other documents or certificates required to be executed and attested by the Treasurer under the terms of agreements approved by the Board and entered into by the District; maintain custody of the District's funds and securities and keep a full and accurate account of all receipts and disbursements, and endorse, or cause to be endorsed, in the name of the District and deposit, or cause to be deposited, all funds in such bank or banks as may be designated by the District as depositories; render to the Directors at such times as may be required an account of all financial transactions; give a good and sufficient bond, to be approved by the District, in such an amount as may be fixed by the District; invest such of the District's funds as directed by resolution of the Board, subject to the restrictions of any agreement entered into by the District; and hold such administrative offices and perform such other duties as the Directors of the District or the Executive Director shall require. If, and to the extent that, the duties or responsibilities of the Treasurer and those of any administrator conflict and are vested in different persons, the conflicting duties and responsibilities shall be deemed vested in the Treasurer.

§ 26. Administrators

When an Executive Director is appointed, the chief administrator of the District shall be the Executive Director. Other administrators may be appointed by the Executive Director with the consent of the Board. All such administrators, except for the Executive Director, shall perform such duties and have such powers as may be assigned to them by the Executive Director or as set forth in Board Resolutions. Any administrator may be removed, with or without cause, at any time by the Executive Director. All administrators will be reimbursed for expenses incurred in performance of their duties as approved by the Executive Director in accordance with expense reimbursement policies adopted by the Board. Notwithstanding the foregoing, all expense reimbursements to the Executive Director shall be subject to the approval of the Chairman, as provided in § 22 of these bylaws.

§ 27. Executive Director

(a) The Executive Director will be selected by the Board and shall serve at the pleasure of the Board, performing all duties assigned by the Board and implementing all resolutions adopted by the Board.

(b) In addition, the Executive Director:

(1) shall be responsible for general management, hiring and termination of employees, and day-to-day operations of the District;

(2) shall be responsible for preparing a draft of the Strategic Plan for the District's operations, as described in § 35 of these bylaws;

(3) shall be responsible for preparing a draft of the District's written Annual Report, as described in § 35 of these bylaws;

(4) at the invitation of a political subdivision within the geographic area covered by the District, shall appear, with representatives of the Board, before the political subdivision to present the District's Annual Report and respond to questions and receive comments regarding the Report;

(5) may execute inter-agency and interlocal contracts and service contracts;

(6) may execute contracts, contract supplements, contract change orders, and purchase orders not exceeding an amount established in a Board Resolution; and

(7) shall have such obligations and District as may be described in one or more Board Resolutions.

(c) The Executive Director may delegate the foregoing duties and responsibilities as the Executive Director deems appropriate, provided such delegation does not conflict with applicable law or any express direction of the Board.

§ 28. Indemnification by the District

Any person made a party to or involved in any litigation, including any civil, criminal or administrative action, suit or proceeding, by reason of the fact that such person is or was a Director, officer, or administrator of the District or by reason of such person's alleged negligence or misconduct in the performance of his or her duties as such Director, officer, or administrator shall be indemnified by the District, to the extent funds are lawfully available and subject to any other limitations that exist by law, against liability and the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him or her in connection with any action therein, except in relation to matters as to which it is adjudged that such Director, officer, or administrator is liable for gross negligence or willful misconduct in the performance of his or her duties. A conviction or judgment entered in connection with a compromise or settlement of any such litigation shall not by itself be deemed to constitute an adjudication of liability for such gross negligence or willful misconduct. The right to indemnification will include the right to be paid by the District for expenses incurred in defending a proceeding in advance of its final disposition in the manner and to the extent permitted by the Board in its sole discretion. In addition to the indemnification described above that the District shall provide a Director, officer

or administrator, the District may, upon approval of the Board in its sole discretion, indemnify a Director, officer, or administrator under such other circumstances, or may indemnify an employee, against liability and reasonable expenses, including attorneys' fees, incurred in connection with any claim asserted against him or her in said party's capacity as a Director, officer, administrator, or employee of the District, subject to any limitations that exist by law. Any indemnification by the District pursuant to this § 28 shall be evidenced by a resolution of the Board.

§ 29. Expenses Subject to Indemnification

As used herein, the term "expenses" includes fines or penalties imposed and amounts paid in compromise or settlement of any such litigation only if:

(a) independent legal counsel designated by a majority of the Board, excluding those Directors who have incurred expenses in connection with such litigation for which indemnification has been or is to be sought, shall have advised the Board that, in the opinion of such counsel, such Director, officer, administrator, or other employee is not liable to the District for gross negligence or willful misconduct in the performance of his or her duties with respect to the subject of such litigation; and

(b) a majority of the Directors shall have made a determination that such compromise or settlement was or will be in the best interests of the District.

§ 30. Procedure for Indemnification

Any amount payable by way of indemnity under these bylaws may be determined and paid pursuant to an order of or allowance by a court under the applicable provisions of the laws of the State of Texas in effect at the time and pursuant to a resolution of a majority of the Directors, other than those who have incurred expenses in connection with such litigation for which indemnification has been or is to be sought. In the event that all of the Directors are made parties to such litigation, a majority of the Board shall be authorized to pass a resolution to provide for legal expenses for the entire Board.

§ 31. Additional Indemnification

The right of indemnification provided by these bylaws shall not be deemed exclusive of any right to which any Director, officer, administrator, or other employee may be entitled, as a matter of law, and shall extend and apply to the estates of deceased Directors, officers, administrators, and other employees.

§ 32. Contracts and Purchases

All contracts and purchases on behalf of the District shall be entered into and made in accordance with rules of procedure prescribed by the Board and the laws of the State of Texas.

§ 33. Sovereign Immunity

The District will not by agreement or otherwise waive or impinge upon its sovereign immunity.

§ 34. Termination of Employees

Employees of the District shall be employees at will unless they are party to a specific written employment agreement with the District executed by the Chairman upon approval by the Board.

Employees may be terminated at any time, with or without cause, by the Executive Director subject to applicable law, contracts and the policies in place at the time of termination.

§ 35. Strategic Plan, Annual Report, and Presentation to Political Subdivisions

(a) Each even-numbered year, the District shall issue a Strategic Plan of its operations covering the next five fiscal years, beginning with the next odd-numbered fiscal year. A draft of each Strategic Plan shall be submitted to the Board for review, approval, and, subject to revisions required by the Board, adoption.

(b) Under the direction of the Executive Director, the staff of the District shall prepare a draft of an Annual Report on the District's activities during the preceding year and describing all revenue bond issuances anticipated for the coming year, the financial condition of the District, all project schedules, and the status of the District's performance under the most recent Strategic Plan. The draft shall be submitted to the Board for review, approval, and, subject to revisions required by the Board, adoption.

(c) At the invitation of the governing body of a political subdivision located within the District, representatives of the Board and the Executive Director shall appear before the body to present the Annual Report and respond to questions and receive comments.

§ 36. Rates and Regulations

The Board shall, in accordance with all applicable trust agreements, the Act, or other law, establish rates, fares and fees, and adopt rules and regulations for the use of assets and infrastructure of the District.

§ 37. Seal

The official seal of the District shall consist of the embossed impression of a circular disk with the words "Austin-San Antonio Intermunicipal Commuter Rail District" on the outer rim, with a star in the center of the disk. No seal shall be necessary for a document to be an official act of the District.

§ 38. Appeals Procedure

The District shall maintain an appeals procedure to be adopted by the Board and amended from time to time that sets forth the process by which parties may bring to the attention of the District their questions, grievances, or concerns and may appeal any action taken by the District.

§ 39. Amendments to Bylaws

Except as may be otherwise provided by law, these bylaws may be amended, modified, altered, or repealed in whole or in part, at any regular meeting of the Board after ten days advance notice has been given by the Chairman to each Director a general outline of the proposed change. These bylaws may not be amended at any special or emergency meeting of the Board.

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